

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
OCTOBER 29, 2013**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Spain, Cameron, DiDonna, Voigt, Olvany

STAFF ATTENDING: Ginsberg, Keating
RECORDER: Syat, Channel 79

Chairman Spain read the following agenda item:

PUBLIC HEARING

Continuation of Public Hearing regarding Coastal Site Plan Review #272-A, Land Filling & Regrading Application #273-A, Eric Richards/Estate of Beatrice Richards et. al., 121-123 Five Mile River Road. Proposing to raze the existing residence and garage, implement the “free cut”, and construct two single-family residences and in-ground pools with associated filling/excavation and regrading work, and perform related site development activities within a regulated area. The subject property is located on the south and east side of Five Mile River Road approximately 700 feet south of its intersection with Davis Lane, and is shown on Assessor’s Map #67 as Lot #2 in the R-1/2 Zone.

Eric Richards said that handouts to the Planning & Zoning Commission had included a letter from Mark Lebow of William W. Seymour Land Surveyors, a grass plan map, and a map prepared by Professional Engineer Rob Frangione of the phasing of the development. Mr. Richards said that the letter from the surveyor indicates that the property is not a corner lot, as defined by the Regulations and he explained that the staging plan is also detailed on the second page of the handouts. Ms. Cameron expressed concern about the view of the site from the River. Mr. Richards said that the handouts also include a photoshopped illustration of the proposed residences. One of them is taken approximately 400 feet from the site on a community beach dock and the other is taken approximately 550 feet from the site. He said that this is partly due to the fact that the east and west shores of the river are not parallel. He noted that trees obscure one of the houses. He said that in one of the pictures, boats are in the view between the east shore and the proposed houses that will be on the west shore of the river. Mr. Spain asked if Mr. Richards could provide the original photographs before the proposed buildings were photoshopped in. Mr. Richards agreed. In response to another question, Mr. Richard said that he had taken the photographs.

Director of Planning Jeremy Ginsberg said that the Planning & Zoning Commission has hired Environmentalist Michael Aurelia of AERI and that Mr. Aurelia had submitted a report, and is present tonight, and will be present at a future meeting.

Mr. Richards introduced Megan Raymond and she reviewed the coastal resources map dated 10-9-13. She said that the coastal resources include the river, the tidal wetlands, which include a high marsh and a low marsh, the boulder row along the river, a vertical masonry seawall, coastal flood area up to elevation 13 and shore land and upland. She reviewed the map illustrating existing and

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proposed extent of lawn. By her calculations, the existing lawn occupies 22,726 square feet, which is approximately 0.52 acres. The proposed lawn will occupy 15,392 square feet which is approximately 0.35 acres and the planting area will occupy approximately 5,000 square feet which is 0.14 acres. She said that many of the old ornamental plants on the property have overgrown and now count as part of the tree area rather than part of the lawn or planting area. She said that in calculations of both the existing and proposed areas, she has excluded the tree areas.

Rob Frangione reviewed copies of revised site plans. He referred to the plan dated October 28, 2013, D1, which is post-demolition. He said the drawing PB1 is the post-blast conditions as if all the materials had been removed from the site was actually removed. He said that the site would never actually look like this because of work going on. Plan PF1 is post-foundation conditions and the areas around the foundations have been back filled. Plan S1 is the completed site plan as proposed. He said this map also shows the flood zones in accordance with the current flood maps. Mr. Frangione reviewed the section drawing that shows a cross section through the proposed building. The dash line represents the existing grade. The cuts for excavation for the proposed houses range from 6 to 16 feet to allow for the proposed basement. The proposed drain pipe south of the southerly lot would be slightly lower.

At about 8:30 P.M., Attorney Wilder Gleason said that he represented the Five Mile River Preservation Group, and that a big issue in this case is the location of the right of way of the private portion of Five Mile River Road. The public portion of Five Mile River Road ends to the north of the site. The applicant contends that they have the right to access and use the private portion of Five Mile River Road, which is to the west of the Richards property. Mr. Gleason said that the right of way of the private portion of Five Mile River Road does not bound any portion of the Richards property and therefore, the owner of the Richards property does not have the right to use or access the private portion of Five Mile River Road. He said that the private street is a 16 foot wide right of way that does not touch the Richards property. The ownership of land between the right of way and the Richards property is unknown at this point but research continues. He said that the Richards property was acquired in 1901. He said that the land to the south and west along the Richards property was owned by two different Williamson families. Lizzie Wyman (apparently a daughter of Williamson) owned land to the south and was granted a 16 foot wide right of way from her property to what was called West Side Avenue in 1929. That is now Five Mile River Road. That easement was from Samuel Williamson and Judson. Francis Williamson owned land to the south of Lizzie Wyman and the property of Francis Williamson had a right to go through Lizzie's property and through the 16 foot right of way that Lizzie has received. In 1922, the property was conveyed from Lizzie Wyman to Wallace and it was subject to the 16 foot right of way to be built by March of 1923. According to the deed, the construction was to be placed as close as practicable to the boundary line of Susan Blamey (who owned what is now the Richards property). Mr. Gleason said that it was important to note that there is steep slope and rocky areas and that the right of way was not abutting the property of Susan Blamey. Property owners to the west of the right of way now have their boundary lines being defined by the boundary of the right of way and they specifically have the right to pass through the right of way. Mr. Gleason said that Land Surveyor Barry Hammons has concluded that the right of way does not touch any portion of the Richards property. The paved portion of the private portion of Five Mile River Road is 12 to 14 wide near the Richards property but measuring 16 feet from the westerly edge of the paved portion, no portion of the right of way touches the Richards property. Mr. Gleason referred to Volume 180, Page 210 of the Darien Land Records and a sketch map that is prepared by Mr. Hammons and

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submitted. Mr. Gleason said the map indicates the location of site markers and monuments and highlights that the easterly line of the 16 foot wide right of way is 3 feet +/- from the Richards property near the south portion of the Richards property and father from the Richards property as the right of way proceeds north. He said that this is not a spite strip that deliberately precludes someone from accessing the property, rather it was never intended that this 16 foot right of way service or be used by the Richards property. Mr. Hammons said that his map is a Class A2 survey and that the applicant's Site Plan is not an A2 Survey. They confirmed that the pavement of the private portion of Five Mile River Road and the 16 foot right of way of that pavement never touches the Richards property. Attorney Gleason said that the neighbors to the south and west of the right of way were given the use of the right of way but not the ownership of the right of way or the strip of land between the right of way and the Richards property. Anyone trying to claim use or ownership of any of that land would need to go through a Quiet Title Action through court. He said that if anyone has the best claim to ownership of the right of way or the strip of land between the right of way and the Richards property, it would be the people that have deeded rights to use the right of way but not the Richards because they never even had the right to use the right of way. Mr. Spain asked if the owners were given the right to pass through the right of way or if it was actually conveyed to them and if it was only conveyed to them, whoever owns the right of way might also own the strip of land between the right of way and the Richards property.

Dave Elders of 142 Five Mile River Road said that he is now in charge of the maintenance of the private portion of Five Mile River Road. He said that there is a very informal association. He said that prior to him someone else had been in charge of the maintenance. He said that in 1995 the private portion was repaved at the expense of those who use it. The Richards family was not part of the group at that point. They are not part of the group at this time. In response to a question, he said that the association pays for the sign to update who owns property on the private portion of Five Mile River Road.

Attorney Gleason noted that he previously submitted in October a list of materials that must or should be submitted by the applicant. There is also an October 11, 2013 supplemental list with references to the Regulations. He said that the applicant has never obtained approval to create two lots and that such an approval should not be granted. Currently there is only one parcel, yet the applicant is proposing the construction of two houses, which is not complying with the Regulations. He said that a 4 foot high retaining wall to hold up a patio would be within 4 feet of a large tree trunk. He said that the retaining wall would need excavation into the root system of the 46 inch diameter oak tree and the excavation would need to exceed the width of the proposed wall, thus the tree is not likely to survive such extensive construction activity in close proximity. Attorney Gleason said that since the south parcel is shown on the applicant's plans is not on or abutting the private portion of Five Mile River Road, the westerly boundary of that area is a side lot line and the southerly boundary is a rear lot line. He said that creating two lots out of this single piece of property would create problems as far as lot width and the amount of land area that can be counted towards lot area. He claimed that it is not practical or possible to divide this property on an east/west boundary as proposed.

Attorney Gleason submitted hand noted sections of the Darien Zoning Regulations including Section 210, which is Definitions, Section 850 which is Land Filling and Regrading and the necessary findings that the Commission must make, Section 1025.9, and Section 1000. He said that the necessary findings under Section 850 are not possible because the applicant is not preserving

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significant trees that should be preserved and the development would have negative impacts on the neighbors and because 6 inches of top soil is not proposed but it is difficult to tell that because no cutting and filling calculations have been submitted. He said that the plan does not comply with Section 1025.9 due the extent of blasting, and Section 1003 requires that all necessary pre-approvals be submitted and that the proposed free cut of the property has not been filed and has not yet been finalized and even if it did, it would not comply with the Regulations. He feels that the Commission should return the application as being defective. Mr. Gleason said that the right of way providing access to the south lot is not adequate and the applicant has failed to adequately protect and enhance the natural environment and that much more information is needed by the Commission in order to properly evaluate the application. He noted that only one elevation drawing of what the buildings would look like has been submitted and a photo shopped version is not a trust worthy representation of what the proposed development will result in. He said that four sets of architectural elevation drawings need to be submitted. He also noted that rock outcrops and many large trees are not shown on the plan as required by the Regulations. They have been able to deduce this from observations from adjacent lands and from the water. He said that under Section 1025 of the Regulations, firefighting access and sight lines have not been adequately provided and existing trees have not been preserved to the maximum extent possible. He said Section 1025.9 requires that the applicant conserve as much of the natural terrain as possible. In this case the applicant is proposing excavations at least down to 21 feet to accommodate proposed buildings and drainage. Mr. Gleason said that the applicant is not preserving large outcroppings or rock that contributes to the public scenic views. He had photo boards of the existing conditions and included some pictures of the developed east side of Five Mile River, which is in Rowayton/Norwalk, to contrast with the natural, undeveloped west portion of the River which is in Darien. He said that the public scenic view is from a large portion of Five Mile River Road and it will not be preserved by the construction of two houses in accordance with the development plans as proposed. He said that people walk through and drive through this view easement area all the time. He said that people also view the natural conditions from the River and the Norwalk side of the river. Public access has been required by Norwalk to allow people to get out to the water to see the river and the Darien side of the river. Mr. Spain noted that if this property were not already developed with a house (if it were vacant) then any new house would be an impact against the natural conditions and the public vista. He questioned whether it would be reasonable for the Commission to deny any development of the property.

Mr. Gleason said that under Section 1025.9, the Commission could also consider historical factors of the area. He said that the Coastal Area Management Statutes, 22a-93(7) talk about sharp rocky shorefronts and the impacts to those coastal resources, including but limited to deprivation of individual character. He submitted a copy of the legal case *Glendenning v. Fairfield Conservation Commission*. He said that this is not a proposed subdivision, but the Commission has previously adopted the Regulations regarding what a safe driveway standard would be. For the first 30 feet from the street, the driveway should not exceed 2% grade so that there is a stopping area for people coming down the driveway before they enter into a street. After that, the grade of the driveway should not exceed 10%. He said that the proposed driveway construction would not comply with these standards previously adopted by the Commission. Mr. Gleason said that in 1984, coastal resources were identified by the Planning & Zoning Commission. He submitted copies of portions of that study report. On page 45, it refers to the marsh along the public portion of Five Mile River Road as being one of the best scenic views in Darien. He said that the Richards property is a significant part of the view.

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Stephen Danzer, Ph.D., reviewed his credentials and explained that he has a Ph.D. in natural resource studies. Prior to the meeting, he submitted a report for the Commission to review. Mr. Danzer said that he has considerable experience dealing with natural conditions, including five years as the Planner in Stratford, which has lengthy shorefront. Mr. Danzer said that the natural resources on the site are worthy of protection. He cited Sections 100, 850, 940, 1000 and 1025 of the Darien Zoning Regulations as well as the Coastal Area Management Act. He said that redevelopment of this property is possible while also preserving the more important site features. He said that the areas below 21 feet in elevation should be preserved and the proposed building should be pushed back to preserve the natural features. He said that the natural features include the northern rocky shorefront, which features a ledge that runs east and west. He said some of this northerly area might have been filled since 1946. Other natural resources include the trees in the north area and the seven large outcropping areas and ledge on the north lot. He said they should all be preserved and details of that are contained in his report. He said that other rock outcrops on the western side of the property are less important. Mr. Danzer said that wildlife habitats of the site are important as are the viewability of the site by the public. He said that view from the water to the site is a public view and the Commission should realize that it is not just the view from the street that is important. He said that Section 940 of the Regulations indicates that natural features are to be retained and preserved. In this case, 27 of the 41 specimen trees mapped on the property would be removed. He said that such a development plan is not in harmony with the Regulations. He said there is more disturbance that will need to take place on the site than indicated on the submitted plans and that such disturbance is not in compliance with the preservation purposes of the Regulations. Mr. Danzer said that the applicant contends that there are no real rocky shorefront areas but he has identified several such areas. Much of this site is also in the flood hazard zone but there are important geomorphic and geologic site conditions where much of the proposed redevelopment is to take place. He said that views and vistas and Coastal Area Management areas include the land and the landscape, not just the view of the water from the road. He said that the current site plan does not minimize the negative impacts on natural and environmental features.

At about 9:50 P.M., Bob Gadsden explained that he has been a resident of Five Mile River Road for many years. He submitted materials and explained that the proposed redevelopment will be a permanent alteration of the public vista and obliteration of natural topographic conditions on the site that should be preserved. He submitted a petition signed by 125+ individuals. He read from the text of the petition.

Mr. Gadsden said that this portion of the Darien sight line is unique and has been painted and photographed by many artists. He said that this is not a generic lot or site and showed photographs of the unique natural conditions. Photographs of the site, both aerial and ground level shots, were submitted. He explained that the two houses as proposed would require dramatic alteration of the existing grades. The topographic map shows the hill from elevation 8 to 32. Much of that area would be leveled to about elevation 20 to accommodate the proposed houses and terraces and swimming pools. Mr. Gadsden said that much ledge rock would need to be removed. He showed colored maps of Lot 1 using highlights to emphasize the different grades. Much of these steep grades will be eliminated as part of the redevelopment and lower ones will be raised to elevation 8 in places. On the south lot (Lot 2) major modifications of the site will be necessary. He said that the proposed impervious area will be approximately 37% of the land. He referred to four exhibits, including the profile of the existing hill and needed excavation to accommodate the proposed

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development, schematic views of the houses, and extra renderings of what the houses would be. He said there needs to be an overlay of existing rocky fill to be removed by the house and photographs of the existing site conditions and a photo shopped version of where the houses would be on the site.

At 10:15 P.M., Mr. Spain mentioned to Mr. Gadsden that due to the late hour, the public hearing needs to be continued until a subsequent date, so that the Commission could continue with its other required business of the evening. He said that the applicant should provide the drawings of the other structures to be more representative of what is proposed. Mr. Ginsberg suggested that the Planning & Zoning Commission could hold a Special Meeting on Tuesday, November 19, 2013 at 8 P.M. Mr. Gleason said that the Commission should also require the applicant to submit detailed cut and fill calculations as these are details needed for the evaluation of the proposed project. Mr. Spain agreed. The Commission decided to continue the Public hearing regarding this matter on Tuesday, November 19, 2013 at 8 P.M. The meeting will be held in Room 206, if possible, or otherwise Room 119 of Darien Town Hall.

At about 10:20 P.M., Chairman Spain read the following agenda item:

GENERAL MEETING

Discussion, deliberation and possible decisions on the following:

Flood Damage Prevention Application #331, Land Filling & Regrading Application #309, Michael & Elizabeth DeSanctis, 9 Plymouth Road. Proposing to elevate the existing residence, construct additions and alterations, and perform related site development activities within a regulated area.

Commission members noted that draft resolutions regarding pending matters had been received. The following motion was made: That the Planning & Zoning Commission waive the process of reading each draft resolution aloud because Commission member had had an opportunity to review the draft prior to the meeting. The motion was made by Ms. Cameron, seconded by Mr. Olvany and unanimously approved.

Commission members discussed the draft resolution regarding the DeSanctis property. The following motion was made: That the Planning & Zoning Commission adopt the following resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. Olvany, seconded by Mr. DiDonna and unanimously approved. The Adopted Resolution reads as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
October 29, 2013**

Application Number: Flood Damage Prevention Application #331
Land Filling & Regrading Application #309

Street Address: 9 Plymouth Road

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Assessor's Map #55 Lot #76

Name and Address of Property Owner: Michael & Elizabeth DeSanctis
9 Plymouth Road
Darien, CT 06820

Name and Address of Applicant And Applicant's Representative: Lance Zimmerman, AIA
Zimmerman Architecture
14 Cliffview Drive
Norwalk, CT 06850

Activity Being Applied For: Proposing to elevate the existing residence, construct additions and alterations, and perform related site development activities within a regulated area.

Property Location: The subject property is located on the east side of Plymouth Road, approximately 500 feet south of its intersection with Shipway Road.

Zone: R-NBD

Date of Public Hearing: July 23, 2013, continued to September 17, 2013 and October 22, 2013

Time and Place: 8:00 P.M. Rooms 206 and 119 Town Hall

Publication of Hearing Notices

Dates: July 12 & 19, 2013

Newspaper: Darien News

Date of Action: October 29, 2013

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:
November 8, 2013

Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 410, 820, 850, and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted redevelopment plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

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1. This application is to elevate the existing residence, construct additions and alterations, and perform related site development activities within a regulated area. The residence is now served by public water and public sewer service.
2. The Zoning Board of Appeals granted a variance for this project as part of Calendar #55-2013 on October 16, 2013. That approval is hereby incorporated by reference.
3. The house will be elevated to have a first floor of at least elevation 15.0, which is at least one foot greater than the FEMA Flood Insurance Rate Maps (FIRM) which went into effect in July 2013. At the public hearing, the applicant's representative noted that the first floor elevation is planned specifically on being 15.2. All mechanical units will be at or above elevation 14.0, which will also comply with the flood regulations.
4. Two rain gardens have been proposed on the property to address stormwater management. The Commission notes that the applicant's engineer has prepared a Drainage Maintenance Plan. The property owner will now need to file a Notice of Drainage Maintenance Plan in the Darien Land Records. This will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts.
5. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
6. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
7. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Flood Damage Prevention Application #331 and Land Filling & Regrading Application #309 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Elevation of the existing residence and construction of additions and alterations to said residence, installation of proposed rain gardens, and other site related activity shall be in accordance with the plans entitled:
 - Site Plan prepared for DeSanctis Residence #9 Plymouth Road, prepared by LBM Engineering, LLC, scale 1"=10', dated 9/20/2013.
 - Zoning Location Survey 9 Plymouth Road, prepared for Michael DeSanctis Elizabeth DeSanctis, by William W. Seymour & Associates, scale 1"=10', dated May 17, 2013 and last revised September 20, 2013.
 - DeSanctis Residence by Zimmerman Architecture:
 - a. Foundation Plan last dated 10-16-13, Drawing No A1.
 - b. First Floor Plan last dated 10-16-13, Drawing No A2.
 - c. Second Floor Plan last dated 9-20-13, Drawing No A3.

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- d. Third Floor Plan last dated 9-20-13, Drawing No A4.
 - e. Proposed Elevations last dated 9-20-13, Drawing A5.
 - f. Proposed Elevations last dated 9-20-13, Drawing A6.
- B. Accompanying the Zoning and Building Permit applications and prior to commencing construction, a certification shall be submitted from a licensed architect and/or engineer that verifies that the final design of the elevated house complies with the applicable flood damage prevention requirements.
- C. As part of the submitted application materials, a Drainage System Operation & Maintenance Plan from LBM Engineering LLC was prepared. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records prior to the issuance of a Zoning or Building Permit, but not later than December 29, 2013. This Notice will alert future property owners of the on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts.
- D. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the Site Plan, and any additional measures as may be necessary due to site conditions. These sediment and erosion controls, plus any additional measures as may be needed due to site conditions, shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- E. Once the construction work is complete and prior to the issuance of a Certificate of Occupancy, the applicant shall submit verification from the project engineer or architect that all aspects of the site grading, building construction and the stormwater management (including, but not limited, to the rain garden) have been completed in compliance with the approved plans and the flood damage prevention regulations. Also prior to a Certificate of Occupancy, a final as-built survey shall be submitted by a licensed Land Surveyor certifying the final construction meets all building setbacks and building coverage maximums, and the finished floor elevation of the residence is at or above elevation 15.0, and the elevation of all mechanical units is at or above elevation 14.0, and final work is in compliance with local regulations.
- F. A detailed regrading design and storm water drainage system design have been incorporated into the plans to avoid potential impacts of runoff on the adjacent properties. No change of ground level or grade is permitted except as specifically shown on the proposed site plan. The two rain gardens shall have the 6' x 24' bottom of the basin at least six inches below the existing grade level. Prior to the request for the Certificate of Zoning Compliance, the applicant shall submit an as-built survey for the land filling and regrading aspects of the project, as prepared by a licensed land surveyor, and it shall show the final finished grades with one foot contours and spot elevations, as well as the foundation location of the house.
- G. Due to the minor nature of the project, the Planning and Zoning Commission will not require a Performance Bond.

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- H. Great care must be taken to make sure that storm water runoff is directed into the drainage system, not toward the neighbors.
- I. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- J. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to: Zoning and Building Permit applications, and possibly a Sewer Connection Permit from Darien Sewer Services for the connection for the elevated residence.
- K. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (October 29, 2014). This may be extended as per Sections 858 and 1009.

All provisions and details of the plans shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. A Special Permit form and Notice of Drainage Maintenance Plan must be filed in the Darien Land Records prior to the issuance of a Zoning or Building Permit and within the next sixty days.

Chairman Spain read the following agenda item:

Coastal Site Plan Review #293-A, Flood Damage Prevention Application #334, Land Filling & Regrading Application #315, Reed & Renee Schwandt, 36 Baywater Drive. Proposal to raze the existing residence and construct a new single-family residence and perform related site development activities within regulated areas.

Commission members discussed the draft resolution. The following motion was made: That the Planning & Zoning Commission adopt the following resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Ms. Cameron, seconded by Mr. Olvany and was unanimously approved. The Adopted Resolution reads as follows:

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ADOPTED RESOLUTION
October 29, 2013**

Application Number: Coastal Site Plan Review #293-A
Flood Damage Prevention Application #334
Land Filling & Regrading Application #315

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Street Address: 36 Baywater Drive
Assessor's Map #55 Lot #89

Name and Address of:
and Property Owner: Reed & Renee Schwandt
10 Coachlamp Lane
Darien, CT 06820

Name and Address of Applicant &: Lance Zimmerman, AIA
Applicant's Representative: Zimmerman Architecture
14 Cliffview Avenue
Norwalk, CT 06850

Activity Being Applied For: Proposal to raze the existing residence and construct a new single-family residence and perform related site development activities within regulated areas.

Property Location: The subject property is located on the east side of Baywater Drive, 350 feet southeast of its intersection with Plymouth Road.

Zone: R-NBD

Date of Public Hearing: October 22, 2013

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: October 11 & 18, 2013

Newspaper: Darien News

Date of Action: October 29, 2013

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:
November 8, 2013

Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 410, 810, 820, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant's representative whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

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1. The application is to construct a new single-family residence, and perform related site development activities within a regulated area. The new residence will be served by public water and sewer. According to the Flood Insurance Rate Maps which went into effect in July 2013, the property is in two flood zones. The area waterward of the seawall is in zone VE15, and the area landward of the existing seawall is at AE14. The first floor of the new house will be at elevation 15.51, which is at least one foot above the base flood elevation of 14. All mechanical units will be placed at or above the base flood elevation, as shown on the submitted Site Plan.
2. The subject property is directly adjacent to Long Island Sound. At the public hearing, a revised Zoning Location Survey was submitted showing the subject application will result in 19.9% building coverage. As described, the proposed residence will be 2-1/2 stories high, and have a crawl space. There will be finished space in the attic.
3. Rain gardens in the front and the rear of the property have been proposed to address stormwater management and water quality. There is no change proposed in existing drainage patterns and no change of ground level other than as specifically shown on the submitted Site Plan. The roof leaders will run to the proposed rain gardens, and not toward the side property lines. The Commission notes that the applicant's engineer has prepared a Drainage Maintenance Plan. The property owner will now need to file a Notice of Drainage Maintenance Plan in the Darien Land Records. This will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts.
4. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Sections 850 and 1000.
5. The Commission finds that the proposed activities with respect to the proposed addition to the residence, if properly implemented, are not contrary to the goals, objectives and policies of the Coastal Area Management Program.
6. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
7. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #293-A, Flood Damage Prevention Application #334 and Land Filling & Regrading Application #315 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction, filling and regrading, and other site development activity shall be in accordance with the following plans submitted and reviewed by the Commission:
 - Site Plan prepared for Schwandt Residence #36 Baywater Drive, by LBM Engineering, LLC, scale 1"=10', dated September 13, 2013 and last revised 9/26/2013.

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- Zoning Location Survey of property prepared for Renee & Reed Schwandt, #36 Baywater Drive, by Arcamone Land Surveyors, LLC, dated Sept. 5, 2013 and last revised 10/22/13.
 - Zimmerman Architecture:
 - Proposed Foundation & First Floor Plan, Drawing No. A1 received Sept 13, 2013.
 - Proposed Second Floor & Attic Floor Plan, Drawing No. A2 received Sept 13, 2013.
 - Proposed Roof Plan & Section Through Stairwell, Drawing No. A3 received Sept 13, 2013.
 - Proposed Elevations, Drawing No. A4 received Sept 13, 2013.
 - Proposed Elevations, Drawing No. A5 received Sept 13, 2013.
- B. Due to the nature and location of this project, the Commission hereby waives the requirement for a performance bond.
- C. Accompanying the Zoning and Building Permit applications and prior to commencing construction, a certification shall be submitted from a licensed architect and/or engineer that verifies that the final design of the proposed new house complies with the applicable flood damage prevention requirements.
- D. Because of this property's location directly adjacent to Long Island Sound, the Commission hereby waives the requirement for a more detailed stormwater management analysis. The Commission is hereby requiring the installation of a rain garden as shown on the plans submitted, as listed in Condition A, above. Each 6' x 24' rain garden shall have the bottom of the basin at least six inches below the existing grade level (as specifically shown on the Site Plan submitted by the applicant).
- E. During the regrading and site work, the applicant shall utilize the sediment and erosion control measures shown on the plans in Condition A, above, and other measures as may be necessary due to site conditions. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the filling and regrading and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.
- F. An Operation & Maintenance Plan was submitted to the Planning and Zoning Office for the proposed drainage system. The Drainage Maintenance Plan requires the property owner and all subsequent property owners of 36 Baywater Drive to maintain the on-site drainage facilities, and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A "Notice of Drainage Maintenance Plan" shall be filed in the Darien Land Records within the next 60 days of this approval and prior to the issuance of a Zoning and Building Permit for the proposed new house.
- G. A detailed regrading design and storm water drainage system design have been incorporated into the plans to avoid potential impacts of runoff on the adjacent properties. Prior to the request for the Certificate of Occupancy for the residence, the applicant shall submit verification from a professional engineer in writing and/or photographs that all aspects of the site regrading

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and stormwater management have been completed in compliance with the approved plans referred to in Condition A, above.

- H. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- I. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to, approval from Darien Sewer Services for a Sewer Connection Permit for the proposed new residence.
- J. This permit shall be subject to the provisions of Sections 815, 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (October 29, 2014).

All provisions and details of the application shall be binding conditions of this action and such approval shall become final upon the signing of the final documents by the Chairman. A Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this action and prior to the issuance of a Zoning or Building Permit, or this approval shall become null and void.

Chairman Spain read the following agenda item:

Flood Damage Prevention Application #322-A, Land Filling & Regrading Application #297-A, James & Diane Bosek, 12 Plymouth Road. Proposing to elevate the existing residence, construct additions and alterations, and perform related site development activities in a regulated area.

Commission members discussed the draft resolution. The following motion was made: That the Planning & Zoning Commission adopt the following resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. Olvany, seconded by Mr. DiDonna and was unanimously approved. The Adopted Resolution reads as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
October 29, 2013**

Application Number: Flood Damage Prevention Application #322-A
Land Filling & Regrading Application #297-A

Street Address: 12 Plymouth Road
Assessor's Map #55 Lot #67 and #68

Name and Address of Property Owner: James & Diane Bosek
12 Plymouth Road

Darien, CT 06820

1. This application is to elevate the existing residence, construct additions and alterations, and perform related site development activities in a regulated area. The residence is now served by public water and public sewer service.

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2. The house will be elevated to have a first floor of at least elevation 15.0, which is at least one foot greater than the FEMA Flood Insurance Rate Maps (FIRM) which went into effect in July 2013. All mechanical units will be at or above elevation 14.0, which will also comply with the FIRM which went into effect in July 2013.
3. At the public hearing, the applicant's representative noted that there is proposed to be about 143 square feet of new impervious surface as part of this application.
4. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
5. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
6. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Flood Damage Prevention Application #230-B and Land Filling & Regrading Application #303 are hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Elevation of the existing single-family residence, associated additions and alterations, and other site related activity shall be in accordance with the plans entitled:
 - Site Plan prepared for Bosek Residence #12 Plymouth Road, prepared by LBM Engineering, LLC, scale 1"=10', dated February 20, 2013, and last revised 09/13/2013.
 - Zoning Location & Topographic Survey 12 Plymouth Road, prepared for James Bosek Diane Bosek, by William W. Seymour & Associates, scale 1"=10', dated December 12, 2012 and last revised October 16, 2013 (submitted at the October 22 public hearing).
 - 12 Plymouth Road, by Zimmerman Architecture, dated 9-18-13, Drawing No. A1-A4.
- B. Accompanying the Zoning and Building Permit applications and prior to commencing construction, a certification shall be submitted from a licensed architect and/or engineer that verifies that the final design of the elevated house complies with the applicable flood damage prevention requirements.
- C. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the Site Plan, and any additional measures as may be necessary due to site conditions. These sediment and erosion controls, plus any additional measures as may be needed due to site conditions, shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.

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- D. Once the construction work is complete and prior to the issuance of a Certificate of Occupancy, the applicant shall submit verification from the project engineer or architect that all aspects of the site grading, and building construction have been completed in compliance with the approved plans and the flood damage prevention regulations. Also prior to a Certificate of Occupancy, a final as-built survey shall be submitted by a licensed Land Surveyor certifying the final construction meets all building setbacks and building coverage maximums, and the finished floor elevation of the residence is at or above elevation 15.0, and the elevation of all mechanical units is at or above elevation 14.0, and final work is in compliance with local regulations.
- E. Due to the minor nature of the project, the Planning and Zoning Commission will not require a Performance Bond.
- F. Because this application will result in an increase of impervious surface of 143 square feet, and is located within the bottom 1/3 of the watershed, the Commission hereby waives the requirement for stormwater management. No change of ground level or grade is permitted except the planters as shown on the survey map of proposed conditions.
- G. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- H. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to: Zoning and Building Permit applications; and possibly a Sewer Disconnection and Connection Permit from Darien Sewer Services for the disconnection of the residence and the connection for the elevated residence.
- I. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (October 29, 2014). This may be extended as per Sections 858 and 1009.

All provisions and details of the plans shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. A Special Permit form must be filed in the Darien Land Records prior to the issuance of a Zoning or Building Permit.

Chairman Spain then read the following agenda item:

Court-ordered remand regarding Affordable Housing Application Under CGS 8-30g (#1-2010), Site Plan Application #277, Land Filling & Regrading Application #247, Christopher & Margaret Stefanoni, 57 Hoyt Street. Proposing to construct 16 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut

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General Statutes) in a new building with associated parking and regrading, and to perform related site development activities.

Mr. Olvany explained that he would be recusing himself and depart the meeting but before he left, he wanted to thank Mr. Spain for all his years of service to the Planning & Zoning Commission. This would be Mr. Spain's final meeting prior to the election in November 2013. Mr. Olvany then departed.

Mr. Ginsberg explained that the Commission had several discussions regarding the pending application. A draft resolution had been prepared and distributed for Commission members to review and modify as necessary. Modifications and revisions have been incorporated into the version that the Commission now has.

Mr. Spain said that there were some spelling and typo errors that he wants to correct. He said the draft resolution seems to accurately reflect the views of Commission members. He said that this matter had been remanded back to the Town by the courts because the applicant modified the plans in response to traffic safety issues and removal of the bypass area. A draft resolution would not allow 16 units as proposed but rather would allow 8 units. The Fire Marshal's concerns and requirements will remain in effect. He said that this reflects the logic and faithfulness to the statutes which expresses concerns of safety to the general public. If 16 units were allowed on this site then at least 5 would have to be affordable housing units. If 8 units are allowed on this site then at least 2.4 or 3 units would have to be affordable housing units. Mr. Spain said he felt that the proposed draft balances the need for affordable housing and the need for safe streets. He said that there are serious sight line issues to the north because the road is not a straight line, it curves to the left (west). The two attached exhibits to the resolution help explain how that matter is still a concern and why the Commission is taking it into account. He said that the sight line of a car that is traveling southbound as waiting to turn left into the site is even shorter than the sight line from the site to the north. Commission members discussed several clarification of numbers of references in the exhibits to make sure that they match up. There was concern for the sight line of vehicles that are coming out of the site and heading south as well as cars that are waiting in the southbound lane to turn left into the site.

Mr. DiDonna said that he went to the site and noted his ongoing concern regarding traffic, sight lines, and vehicles speeds on Hoyt Street.

Mr. Ginsberg said that part of original decision was to approve 4 units at the site, and now without having the bypass area, the Commission is willing to approve 8 units on the site. Mr. Spain said that the judge said the Commission needed to reconsider the application based on the fact that there would be no bypass. The project still needs to get a final permit and approval from the Connecticut Department of Transportation (DOT) who could impose other stipulations. He said that the State DOT will not make a final decision until the applicant has obtained a final decision from the Town regarding the use of the site. Ms. Cameron said that adequate sight lines are also necessary to make sure that motorists have sufficient stopping distance to avoid hitting pedestrians. Mr. DiDonna said that he noted how dangerous it is to cross the street in this area. Commission members noted that neighbors had said that they cross Hoyt Street farther to the north where the sight line is better. Commission members discussed the fact that the exhibits attached to the resolution should be full

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sized (24"x36") in the permanent file, and to the applicant and to the court, although reduced versions down to 8 ½ x 11" might be included in other copies.

The following motion was made: That the Planning & Zoning Commission adopt the following resolution to grant the application with modifications. The motion was made by Mr. DiDonna, seconded by Ms. Cameron and unanimously approved. (DiDonna, Cameron, Spain and Voigt voted in favor, and no one voted in opposition). The Adopted Resolution reads as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION UPON REMAND
October 29, 2013**

Application Number: Affordable Housing Application Under CGS 8-30g (#1-2010),
Site Plan Application #277, Land Filling & Regrading Application #247
Court-ordered remand

Site Location Street Address: **57 Hoyt Street**
Assessor's Map #27 as Lot #168-1

Name and Address of Property Owners: Christopher & Margaret Stefanoni
And Applicants: 149 Nearwater Lane
Darien, CT 06820

This Commission rendered its decision on this application in a resolution dated March 22, 2011 ("Decision"), and the applicants then appealed to the Superior Court. By Order dated December 19, 2012 in that appeal, entitled Christopher & Margaret Stefanoni, v. Darien Planning and Zoning Commission – Docket No.: HHB-CV-11-5015368S (the "Appeal"), Judge Henry Cohn remanded the matter back to the Darien Planning & Zoning Commission for limited reconsideration and decision. The legal notice for the original application read as follows:

Affordable Housing Application Under CGS 8-30g (#1-2010), Site Plan Application #277, Land Filling & Regrading Application #247, Christopher & Margaret Stefanoni, 57 Hoyt Street. Proposing to construct 16 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities.

Property Location: The subject property is located on the east side of Hoyt Street approximately 100 feet south of its intersection with Echo Drive.

Zone: R-1/3 Zone

Date of Public Hearings on this remand: May 14, 2013; June 4, 2013; July 16, 2013;
July 23, 2013; July 30, 2013; September 10, 2013; September 17, 2013

Time and Place of Public Hearings: 8:00 P.M. Darien Town Hall

Date of Action: October 29, 2013

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Actions: **GRANTED WITH MODIFICATIONS**

Scheduled Date of Publication of Action:
November 8, 2013

Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted development plans, and the statements of the applicants, whose testimony is contained in the record of the original public hearing, as well as of the public hearings on this remand, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with and has observed the site and its immediate environs.

Following careful review of the submitted application materials, all the testimony and materials submitted at each session of the public hearing, and related analyses, the Commission finds:

I. THE SUBJECT APPLICATION UPON REMAND

- A. The Application Request. The aforementioned application continues to seek approval to construct 16 units of age-restricted housing on the subject property (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities. The application was remanded to the Commission by the Court after the applicants submitted to the Court revised plans dated August 1, 2011, which revised plans removed a proposed bypass lane from the street for access into the site. The revised plans had not been reviewed by the Commission, so the Court remanded the application for limited consideration and decision by the Commission of all traffic and pedestrian safety issues which are raised by this development if it is constructed without the originally proposed “bypass area” along Hoyt Street. There has been no official decision or statement from the State of Connecticut Department of Transportation (ConnDOT) as to why it originally called for the bypass area as part of this development; nor is it clear what ConnDOT’s position is about it at this point in time. During the pendency of the remand hearing, at applicants’ request, the Court expanded the scope of the remand to include further consideration of the fire safety issues and conditions which had been included in the Commission’s original decision.
- B. Page 8 of the Commission’s March 22, 2011 decision in this matter (hereinafter “the Decision”) describes “The Proposed Bypass Area Required by ConnDOT”. It states, “The applicants noted that ConnDOT has mandated that a “bypass area” must be installed before it will approve the required driveway entrance to the proposed development from Hoyt Street/Route 106. This area was also referred to as the “bypass lane”, “widening of the shoulder”, or “swerve lane”. It became evident during the original public hearing process that ConnDOT would require the bypass area in order to allow vehicles traveling

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southbound on Hoyt Street to move past any vehicles waiting to turn left into the proposed development...”

- C. In connection with the remand, the applicants submitted to the Commission the revised plans dated August 1, 2011, which removed the bypass lane they previously had proposed for Hoyt Street. The revised August 1, 2011 plans were signed by a ConnDOT employee, Mr. LaGoja, on February 17, 2012, with the notation “True Copy of Plans Submitted and Approved”. The Commission is aware of an affidavit dated June 28, 2012 of Paul Holmes, another ConnDOT employee, filed in the Appeal, in which Mr. Holmes states that his Department’s approval was conditioned on the town’s review and approval of the applicants’ plans, as ConnDOT did not undertake an independent collection of traffic data to assess the need for a bypass area. That affidavit also states that Mr. Holmes was not aware in February 2012, that the town had not reviewed the August 1, 2011 plans. No other written correspondence was received from ConnDOT. The only other input from ConnDOT during the remand process was a phone call on June 7, 2013 from Paul Holmes of ConnDOT to Jeremy Ginsberg, Darien Planning & Zoning Director. In that call, Mr. Holmes noted that ConnDOT’s conditional approval was in error, as there were issues with the proposed site’s driveway, in that it flared out in front of a different property to the north which had been brought to ConnDOT’s attention by a letter from the neighbor to the north. The applicants responded to that concern during the remand process by moving the driveway to the south by about ten feet. Thus, the proposed driveway no longer flares out in front of the adjacent property to the north. It is still unclear to the Commission how ConnDOT could have “approved” the prior application which did have the driveway flare out in front of the neighbor’s property, which apparently does not comply with ConnDOT standards or requirements.

The Commission has been made aware of various legal and administrative proceedings brought by the applicants to the courts and to this Commission in which the applicants submitted incomplete maps and land records including those relating to their current residence at 149 Nearwater Lane; in their litigation to stop the moratorium granted to Darien by the State; and in the litigation and proceedings involving their previous residence at 77 Nearwater Lane.

- D. Public hearings were held on the remand application. The Commission hired traffic expert Michael Galante of Frederick P. Clark Associates regarding this remand application. Various exhibits were submitted by the applicants including some prepared by their civil engineer and surveyor, Barry Hammons; and testimony was received from neighbors, the intervenor Mark Gregory, and their traffic expert, Michael O’Rourke, of Adler Consulting. The applicants did not submit any new written evidence from their traffic expert David Spear of DLS Consulting, nor did Mr. Spear testify at the remand hearings. But the applicants’ submittals during the remand included a July 22, 2011 memo from Mr. Spear with an associated graph, for submission to ConnDOT.
- E. During the public hearing process, the August 1, 2011 site plans were further modified by revised plans dated July 9, 2013, to move the proposed driveway further to the south. The relocation of the driveway changed the sight line distance to the north, but the July 9, 2013 revised plan did not adequately depict that sight line. The applicants thereafter submitted

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revised plans dated September 3, 2013, which still failed to fully depict the sight line to the north as the site plan did not show an existing curve in Hoyt Street nor did it fully extend the sight line measurement to this curve in the road. No changes were proposed to the size or location of the building during the remand hearing process. The only change to the proposed building was the addition of a window.

II. THE SUBJECT PROPERTY AND EXISTING PROPERTY CONDITIONS

The Decision extensively describes the subject property and existing property conditions, including: Location, Zoning, Inland Wetlands, Utilities, and Topography.

It became apparent during the remand hearings that there are numerous traffic safety issues related to this development. They include: a) the inadequate sight lines to the north from the proposed relocated development driveway; b) the number of traffic accidents in the site's vicinity (especially rear-end accidents); c) speeds along Hoyt Street; and d) pedestrian safety.

A. TRAFFIC SAFETY ISSUES.

Regarding traffic and pedestrian safety, testimony was received during the remand hearings from Michael Galante of Frederick P. Clark Associates and Michael O'Rourke of Adler Consulting. Mr. Galante prepared an extensive report with photographs dated May 23, 2013. In that May 23 report, he reviewed traffic volumes, accident history, speed, site traffic generation, bypass lane evaluation and sight line analysis. Mr. Galante's report was limited to the August 1, 2011 revised plans because the applicants modified their plans by moving the driveway entrance after Mr. Galante's review was completed and his report was received. Adler Consulting wrote two letters, dated July 9, 2013 and July 30, 2013. Sight lines are important for a number of reasons—both for the drivers exiting the site and for the drivers approaching the exit driveway, particularly from the north.

As more fully developed in the 2010-11 hearings, and in the Decision, the proposed site is located on the west side of Hoyt Street (Connecticut State Route 106). The street, which connects local drivers to the Merritt Parkway, is a heavily traveled highway with but a single lane in each direction. Of particular importance to the proposed development is the fact that there is a pronounced bend in the road a short distance north of the site such that southbound traffic approaching from the north must come around the bend before drivers can see the proposed entrance driveway and any vehicles waiting to make a left turn into the site, and, correspondingly, vehicles seeking to leave the site and turn left into the southbound lane of Hoyt Street will also be unable to see the traffic approaching from the north – their right – until those vehicles come around the bend in the road.

As fully developed in the main record of this proceeding, the applicants initially proposed plans for approval by this Commission with a bypass lane or area to be added along the west or southbound side of Hoyt Street immediately adjacent to the proposed development. The applicants at that time advised the Commission that the bypass was included because they first had taken their proposal to ConnDOT because

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the street was a State highway, and were told by ConnDOT that the bypass was needed as part of the development if applicants were to receive the necessary State approval for their initial proposal.

During the 2010-11 hearings on applicants' proposal, the applicants and several traffic experts pointed to a shortened sight line to the north as a reason for the bypass requirement, and cited as well ConnDOT's concern about traffic stopping and queuing adjacent to the site while one or more vehicles at the front were waiting for a break in the oncoming northbound traffic in order to turn left into the site.

On remand, the applicants did not provide any explanation to the Commission of the reason for ConnDOT's apparent change of position regarding the bypass lane. They did not have Mr. Spear, their traffic expert, or anyone from ConnDOT, appear at the remand hearing to shed light on this issue. The applicants simply produced copies of documents submitted by them to ConnDOT after this Commission's Decision, one of which was the graph from Mr. Spear's memo which charts a series of curves derived from the ratios of left turning vehicles to the volumes of oncoming or opposing traffic. The applicants did not produce Mr. Spear to explain the chart. This graph was the only information pertinent to the bypass lane that the applicants submitted to this Commission on the remand proceedings. Based on past dealings with ConnDOT, the Commission understands that ConnDOT does not usually require construction of a bypass lane, which is inconvenient and costly, unless there is a safety concern or calculation that requires it. The applicants have provided the Commission with no information on this issue, however. They never specified to the Commission the information or calculation they gave to ConnDOT that made ConnDOT originally require a bypass. And on remand they have not provided the Commission with an explanation as to what information made ConnDOT change its position. As a result, there is a gap or void in their presentation.

It is the Commission's understanding that, with regard to the graph submitted to ConnDOT, these curves and the prevailing speed of traffic can assist highway designers in deciding whether to introduce measures such as a traffic signals or bypass lanes in order to improve traffic safety and flow. A similar set of curves were charted by Mr. Galante, the expert who assisted the Commission on the remand hearings, and that chart was included in his May 23 report. In presenting it, he told the Commission that the data as plotted on these curves did not require some intervention to improve traffic safety at the location, but a review of the charted data establishes that the points come close to the line where a bypass lane would be required. He also acknowledged that the chart had only accounted for speed and had no parameter for, and so did not take into account other factors such as grade, or here, the curve in the road and the shortened sight lines. So the reason for having a bypass lane is not driven by the chart alone, as it does not take into consideration, or account for, these other factors.

Such other factors exist at this site. Specifically, there is an existing insufficient sight line for vehicles turning from Echo Drive into the southbound traffic lane of Hoyt Street across from the site. There is also a bend to the northwest in Hoyt Street just

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north of Echo Drive, which should have been, but is not, depicted on any of the applicants' pertinent site plans. This bend produces two reduced sight line distances: one for southbound vehicles approaching the Site, which cannot be adjusted or improved by the left-turning waiting vehicle; and a second one for vehicles exiting the site driveway.

The danger for southbound traffic encountering a stopped, turning vehicle ahead, is compounded by the reality of a fast-moving situation; and here there is no option but to stop; and, if there is no room to stop, given the short sight line for vehicles travelling at 40 mph and higher, there is a high probability of a collision, given the number of documented rear-end accidents (discussed below) that have occurred along this narrow roadway in the vicinity of the site, and before any building of the proposed development.

As noted, the applicants' revised plans did not show the road curve, or the sight line extending to or through the curve in the road. The proper method for depicting sight line distances is to draw and show the full extension of the sight line. The applicants' plans follow the proper method with the depiction of the sight lines extending south, but not with those extending north from the site. When the applicants revised their plans to reposition the driveway, the sight line to the north was only partially shown and was stated to be 511 feet. A subsequent revision put that sight distance at 550 feet, but also did not fully show the sight line or the curved road. The Commission requested that the full sight line be shown on a map or plan. The applicants did not provide a revised site plan, but instead produced a copy of a tax assessor's map of the area with the sightline drawn on to it. On this larger scale plan, the sight line from the driveway to the north appeared to start out from the driveway in the same direction as the line that was shown on the first sheet, but then it tended to bend to the west or to the left as one looks north from the driveway. As a result of that bend, the line appears to pass inside the sidewalk. However, it is not a straight line, and because of the curve in the road, the line would extend onto and through other properties. In reality, the actual line of sight is obstructed, based upon the on-site observations of several neighbors, as well as by members of this Commission. Based upon the applicants' last submittal, as well as upon the Commission members own observations that the path of the sight line is obstructed, the Commission finds that the northern sight line is shorter than stated on that map. Nonetheless, even with the bend in the sight line depicted on the plan, the sight line crosses the curb and the sidewalk on the west side of the road, where actual observation at the site shows there is no unobstructed visibility.

This bend in the road creates a sight line safety issue not only for vehicles exiting the site driveway, but also for the vehicles that are stopped or queued in the southbound lane waiting for a break in northbound traffic to turn left into the proposed site. The beginning of that latter sight line is the point where southbound vehicles come around the bend in Hoyt Street. The other end of this sight line is the place ahead where the stopped vehicle is waiting to turn left into the site from the southbound lane.

The applicants put in several exhibits showing sightlines from the driveway, but they did not put in any exhibits showing the distance between a stopped left-hand turning

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vehicle and the location to the north where a southbound vehicle first will come within sight of that stopped vehicle. The Commission was able to fill this void by reviewing the applicants' revised plans and from testimony of residents in the neighborhood, and from Commission members own observations at the site.

The distance between the site's entrance driveway and the location to the north where the entrance driveway first comes into view starts just to the south of Edmond Street intersection with Hoyt Street, approximately at telephone pole number "SNET 423", as shown on applicants' plan. As observed by several neighbors and members of this Commission, the place where a stopped vehicle waiting to turn into the site would first become visible to southbound traffic is further around the bend to the south, approximately halfway between poles numbered 423 and 424, as shown on that same plan. This sight line is clearly inadequate for stopping distances required due to the actual speeds traveled.

During the public hearing process, the Commission heard from their traffic expert as well as the neighbors' traffic expert regarding speeds on Hoyt Street in the general vicinity of the subject property. The applicant did not submit any traffic information at the remand. ConnDOT reports submitted by the experts show that traffic volumes at the site have increased since the application first was filed. While the two traffic experts differed slightly on their findings on existing speeds, the Commission finds that the 85th percentile speed of 40 miles per hour prevails in this vicinity and is most accurate, as it was based on testing by Adler over several days, while Mr. Galante's testing occurred only on one day. At least 15% of the traffic passing the site is at 40 miles per hour or higher. Some of it is substantially higher. The posted speed limit here is 25 miles per hour because of the nearby school. Thus, it was shown that much of the traffic is exceeding posted speed limits by a substantial margin. This traveled speed is used in determining the appropriate sight distances. According to the ConnDOT Highway Design Manual cited by the Adler letter dated July 9, 2013, p.4, at 40 mph, the sight distance required for safe stopping is 445 feet.

During deliberations, due to the unreliability of the exhibit submitted by the applicants to show the northern sight line and sight distance from the proposed sight driveway, and also because the applicants submitted no measurements on the sight distance for southbound traffic approaching vehicles stopped to turn into the site, the Commission placed the proper sight lines and sight distances onto photocopies of the applicants' submittal entitled, "Grading and Utility Plan Hoyt Senior Residences Sheet 4 of 6 revised to September 3, 2013. These photocopies with the added sight lines and distances are attached to this resolution as Exhibits A and B.

On the first Exhibit (Exhibit A) the sight line for southbound traffic approaching a vehicle stopped waiting to turn left into the site. That sight line is also shown as a red line. It shows a southbound vehicle prepared to turn left into the site. That stopping distance is 350 feet.

On the second Exhibit (Exhibit B attached hereto and made a part of this decision) the driveway sight line to the north is shown as a red line. This is the true sight line (a

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straight line), looking northward from the proposed driveway. That sight distance is 390 feet.

2) Rear End Accidents

The Commission recognizes the pattern of accidents on Hoyt Street in the vicinity of the Site as tending toward rear-end collisions and side-swipes of overtaken vehicle s in the same lane---both being examples of fast moving vehicles, in this narrow two lane double yellow-lined street, not being able to stop in time to avoid a rear-end collision or an illegal passing maneuver.

3) Speeds along Hoyt Street

The July 9, 2013 letter from Adler Consulting gave information on vehicular speeds, noting that they took readings in both November 2010 and May 2013. Both of those readings indicate that vehicles generally exceed the existing 25 mph speed limit in both directions. The 85th percentile speed measured in the northbound direction was 39 mph, and the 85th percentile speed in the southbound direction was 40 mph. This speed information is a fundamental component in understanding the applicable sight distances required for safety at this project.

4) Pedestrian Safety

Another issue which arose during the remand public hearings was the issue of pedestrian safety. It is acknowledged that due to the existing volume and speeds, Hoyt Street is a difficult street for pedestrians to cross. The Commission believes that the best place to cross the street is just north of the subject property. The Commission sees the need to minimize the number of pedestrian crossings, and to make them as safe as possible. It may be appropriate for ConnDOT to consider the installation of a crosswalk somewhere in the vicinity for pedestrian safety. The Commission needs to ensure sufficient on-site parking, so that no vehicles connected to this development are parked along Hoyt Street (see references to sideswipe accident data (above item 2)), or on Echo Drive (which would require pedestrians to cross Hoyt Street to get to their vehicle).

5. Parking

The Commission's Decision on the project included a full rationale and analysis on parking requirements applicable to this project. The testimony presented during the remand public hearings only reinforced these original issues relating to parking. While the applicants have proposed 1.5 spaces per unit, the Commission believes that the site's specific location and the specific nature of the proposed development (two-bedroom 1,000+/- square foot units) need to be taken into account. Based upon that, the Commission is again requiring two parking spaces per unit to be provided on-site. The reasons for this requirement are both the traffic and pedestrian safety issues, as noted herein.

In its Decision (on pages 19-20), the Commission required that at least 2.0 parking spaces per unit shall be constructed, plus one space on the site being a handicapped-accessible space, as required by the Building Code. The Commission confirms that this would still apply, and thus, if the number of units is reduced, the number of on-site

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parking spaces may also be increased to two spaces per unit, while simultaneously reducing the overall number of parking spaces, and whatever handicapped-accessible parking is required by the Building Code in addition to that (for example, for eight housing units, sixteen parking spaces will be required plus Code-required handicapped-accessible spaces). With this further space available (because fewer than the applicants' 24 parking spaces will be needed), grass pavers could be used for further overflow parking spaces to further help prevent parking on Hoyt Street where none is allowed.

B. FIRE SAFETY ISSUES.

1. The Fire Marshal submitted a July 16, 2013 memo which also attached his prior memos dated September 30, 2010 and January 14, 2011 regarding the subject property. The applicant did respond to and accommodate a number of issues in the 2010 and 2011 memos, which were outlined in their July 16, 2013 memo. However, one outstanding issue persists. This is item #1 in the July 16, 2013 memo. It regards appropriate distance around the building for fire fighters to operate. In his memo, the Fire Marshal noted that 15 feet would be needed, as it would not be appropriate for a fire fighter or fleeing residents to have to walk either under a rescue ladder or within a few feet of the ladder. The Commission agrees with this, and requires modifications to the building such that there is a fifteen foot setback from the south side of the building to the south property line. Fifteen feet is also needed at the back, eastern face of the building. This space has been included in the Decision's modification to increase the rear and side setbacks to conform with the deeded setback restrictions described in the Decision.

2. The Fire Marshal has made it clear that this building, given a) its senior multi-family tenant configuration; b) its location some significant distance from the nearest fire station; and c) its structural design, height and construction materials, will need to have at least fifteen feet of clear space adjacent to each window at which a rescue ladder may be placed, and an unobstructed flat walking area around the building perimeter.

3. The Fire Marshal's first comment in his July 16, 2013 memo read as follows:

"The east and south lot lines, in order to have access for the use of ladders for firefighting both need a minimum of 15 feet clear access from the building, which would include any vegetation growth, fences or walls..."

4. Evidence in the form of a July 30, 2013 letter was received that the neighbor to the south at 53 Hoyt Street (Mrs. Guttuso) is planning to install a fence along the shared south property line if the project is constructed. Such fences are allowed as-of-right with no review or action needed in the R-1/3 zone for residential single-family properties. Special permit uses within the residential zone or requests to modify site plans on commercial properties require review and action by the Commission, but fences on properties which contain single-family residences, such as Mrs. Guttuso's, do not. Thus, the Commission must assume said fence will be built, and ensure that fire fighter access is appropriate, because the Commission cannot control the installation of a fence by Mrs. Guttuso at 53 Hoyt Street.

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5. Under the applicant's proposal, there will be a step down retaining wall along that same south property line due to needed regrading for the building. Upon learning of this, the Fire Marshal stated that there should be a fence along the top of the retaining wall in any event in order to avoid a dangerous downstep that would be a hazard to fire fighters and to exiting residents, particularly if there were a nighttime fire. This will be required of the applicants by the Commission and may obviate the Guttuso fence.

6. This Property is Distinguishable From Others Referenced by The Applicants.

In their application materials, the applicants refer to two other projects: 745 Boston Post Road (a mixed use building); and Maplewood at 599 Boston Post Road. While the Commission does not believe that such a comparison is at all appropriate and is not relevant to this application, and that each property must be reviewed on its own merits, and in light of that site's particular conditions and location, a brief review of each is in order based on the record.

a) 745 Boston Post Road

The property at 745 Boston Post Road is a mixed use building, at the corner of Boston Post Road and Academy Street. There are apartments on the upper floors. There is now full fire access to all four sides of the building. Being a mixed use building, any changes to the building are subject to site plan review by the Planning and Zoning Commission. The adjacent property to the west is also a commercial property, with any changes subject to review and action by the Planning and Zoning Commission. The Darien Fire Department is one block away at 848 Boston Post Road. The residential units are not age-restricted for senior housing.

b) 599 Boston Post Road.

This building was originally constructed many years ago, and recently underwent internal renovations. It was a nursing home, and is now an independent/assisted living facility. It is at the corner of Boston Post Road and Brookside Road. During the renovation process, the outside of the steel framed building remained the same (except simple façade changes). No additions to the inside or outside of the building were made. As part of the recent application, changes were made to the driveway entrance. While the residents are likely to be senior citizens, because, this is an independent/assisted living facility it has on-site 24 hour staff. The Darien Fire Department is about two blocks away at 848 Boston Post Road.

As noted, each property has its own unique characteristics, and is reviewed individually based upon each application made. The Fire Marshal evaluates each one based on its location, structure and other relevant characteristics. The Commission has been shown no basis to make fire safety findings contrary to his reports and testimony in the present application.

C. REMAINING AREAS OF DISPUTE

On September 6, 2013, the applicants submitted a two-page "Reponse/Status of Conditions imposed on Application by Adopted Resolution March 22, 2011". This document notes which items in the Commission's Decision have been agreed to by the applicants, and which

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ones are still in dispute. The remaining items still in dispute, beyond what is discussed fully in this decision on remand, appear to be:

1. Vested property rights
2. Parking ratio
3. Emergency egress (additional emergency egress)
4. Building setbacks on south and east side
5. Building Height
6. Blocking of access by parking spaces
7. Open space for snow storage
8. Planting area along north property line
9. Performance Bond.

III. DETERMINATION

- A. The Commission finds that the removal of the bypass lane and relocation of the proposed driveway raise significant, additional safety concerns requiring modifications that are necessary to protect public interests in health and safety which the Commission may legally consider.
- B. The Commission also finds that the potential harm presented by the revised application without modifications clearly outweighs the need for five units of affordable housing in Darien.
 1. The Commission finds that substantial public interests in health and safety exist with regard to this application as revised, which the Commission must protect. Specifically, the Commission finds that the bypass originally required by ConnDOT was so required to reduce the risks from the inadequate sight lines, particularly the increased risk of rear-end collisions, which have occurred already in the vicinity of the site. Such collisions will likely occur even more frequently after the proposed development. This building with an entrance driveway along the east side of Hoyt Street will add to an already existing risk from the additional vehicles turning left into the site. Such turning vehicles would have to stop and wait in the southbound lane of Hoyt Street for a break in the northbound traffic to make that turn and the sight lines for traffic approaching the stopped vehicle from behind are inadequate. The bypass sought to alleviate this situation but it created other risks, identified in the Decision, which the applicants nullified by removing the proposed bypass. Its removal from the revised application does not, however, address the safety concerns that caused ConnDOT to require it in the first instance. Those risks continue to exist and the sight lines for the relocated driveway also creates risks. The need to protect the substantial public interest in health and safety is supported by evidence in the record of the remand proceeding and in the main record.
 2. The Commission finds that ConnDOT's approval of the August 1, 2011 revised plans without the inclusion of the bypass lane supports the Commission's finding that a reduction in the number of proposed units reduces the risks which the bypass was intended to address. As noted, ConnDOT originally required a bypass lane for sixteen units in its conditional approval of the July 2010 plans. In February 2012, after the

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Commission approved the application as modified by its resolution of March 22, 2011 to reduce the number of units to four, ConnDOT approved the revised August 2011 plans that removed the bypass. The applicants provided no other material changes that explain ConnDOT's decision to allow removal of the bypass it previously mandated. The Commission therefore finds that the risks the bypass lane sought to address are reduced as the number of units is decreased and that the application, as revised, can be modified to address the traffic safety risks arising from the removal of the bypass and the relocation of the driveway.

3. The Commission further finds that the risks generated by the inadequate sight lines will be made far worse if any vehicles park or stand on Hoyt Street at or near the site as such vehicles will further obstruct sight lines and contribute to already existing upward trend of accidents from side swiping by vehicles.. The Commission also finds that there is a likelihood of increased safety risk to pedestrians if such parking and stopping were to occur.
4. The Commission has balanced the need for five units of affordable housing in Darien against the traffic and pedestrian safety risks presented by the revised application to pedestrians and drivers using Hoyt Street and the proposed development's residents as well. In weighing these competing goals it is clear that the risk of potential harm outweighs the need for affordable housing for the reasons set out herein.
5. The Fire Marshal has not changed his position on the requirement for greater setbacks than those proposed by the applicant. The Commission finds the Fire Marshal's requirements to be credible and directly relevant. The Commission finds that the applicants' attempt to rely on the setbacks approved for different projects at different locations does not address the concerns raised by the Fire Marshal as to this project and its site condition and location. Accordingly, the Commission continues to require its previous site plan modification in its Decision to increase setbacks in the rear and southern side yards to address fire safety; and it adds the requirement of a six foot high stockade fence along the retaining wall on the south property line in order to protect the safety of residents and fire personnel, all of which are substantial public interests the Commission finds outweigh the need for five units of affordable housing.
6. The Commission acknowledges the importance of affordable housing and the legislative objective to increase such housing and has weighed it against the risks and dangers to the public presented by the applicants' project. The commission finds that this worthy objective does not outweigh the traffic and fire safety dangers associated with the applicants' project as originally designed and as revised on this remand and that the project needs to be modified to address these issues and to properly balance the need for affordable housing against the harm to the public interest in traffic and pedestrian and fire safety. The Commission finds that modifications can be made to the revised application to obtain this better balance.

IV. DECISION TO GRANT THE REMAND APPLICATION WITH MODIFICATIONS

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NOW THEREFORE BE IT RESOLVED that the applications for Affordable Housing Application Under CGS 8-30g (#1-2010), Site Plan Application #277, Land Filling & Regrading Application #247, Christopher & Margaret Stefanoni, 57 Hoyt Street, are hereby GRANTED WITH FURTHER MODIFICATIONS BASED ON THE RECORD PRESENTED ON REMAND.

In addition to the modifications and stipulations approved in the Decision, the application, as revised, shall be modified as follows based upon the entire records from 2010-2011 and the 2013 remand:

1. THE APPLICATION SHALL BE MODIFIED TO ADDRESS TRAFFIC SAFETY REQUIREMENTS: Modify plans to address traffic and pedestrian safety issues as presented during the public hearing process:

- a) Change the number of proposed units from sixteen to eight (with at least 30% of those units being affordable) in order to reduce the risk to vehicles in the southbound lane on Hoyt Street and to vehicles exiting the site due to the inadequate sight lines. Reducing the number of units will reduce the number of vehicles turning into and exiting the site. Reducing the number of vehicles will necessarily reduce the number of opportunities and the likelihood of more accidents and rear end collisions that already occur in the vicinity of the site. The Commission acknowledges that this modification is an increase from the four units approved in its Decision and notes that the applicants testified at the court hearing in this case that a reduction to four units adversely impacted the viability of their project. The modified number of eight units represents the Commission's determination to balance the risks to the public with the statutory need for affordable housing and the project's viability.
- b) Change the number of parking units to two per unit. A reduction in the number of units allows for an increase in on-site parking, which will result in better traffic safety, as it will a) allow room on-site for taxis and for delivery vehicles, such as UPS and daily mail services and b) allow sufficient on-site parking, greatly reducing the need for visitors (and possibly even residents) to park off-site, thereby having to cross Hoyt Street. The submitted accident data did show side-swipes of vehicles which were pulled over on Hoyt Street, including one mail truck. It is important that there be no mailboxes on or near the street, but rather, mailboxes in or near the proposed building.

2. THE APPLICATION SHALL BE MODIFIED TO ADDRESS FIRE SAFETY REQUIREMENTS OF DARIEN FIRE MARSHAL:

Modify the plans as originally decided by the Commission to address the fire safety issues.

- a) Increase fire access along the south and east sides of the building. There should be additional room around all sides of the building to give the Fire Department more appropriate and improved room to operate. The building setback on the south and the eastern property lines (considered the side and rear yards respectively as defined in the Darien Zoning Regulations), are now 10 feet and 5 feet. The Commission has previously determined, and now reiterates, that these setbacks shall be increased to comply with the deed and recorded property setback requirements, with at least 25 feet

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along the east property line to address the vested private property rights issues noted by Attorney Fuller, and 15 feet along the south property line to address the concerns of the Fire Marshal outlined in his September 30, 2010 memo, as well as to comply with the side setback restrictions of the described property rights.

- b) Install and maintain a six foot high stockade fence atop the proposed retaining wall along the south property line in order to avoid the dangerous downstep hazard identified by the Fire Marshal.

In all other respects, the Planning and Zoning Commission Decision of March 22, 2011 remains in effect, and is incorporated by reference.

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EXHIBIT A

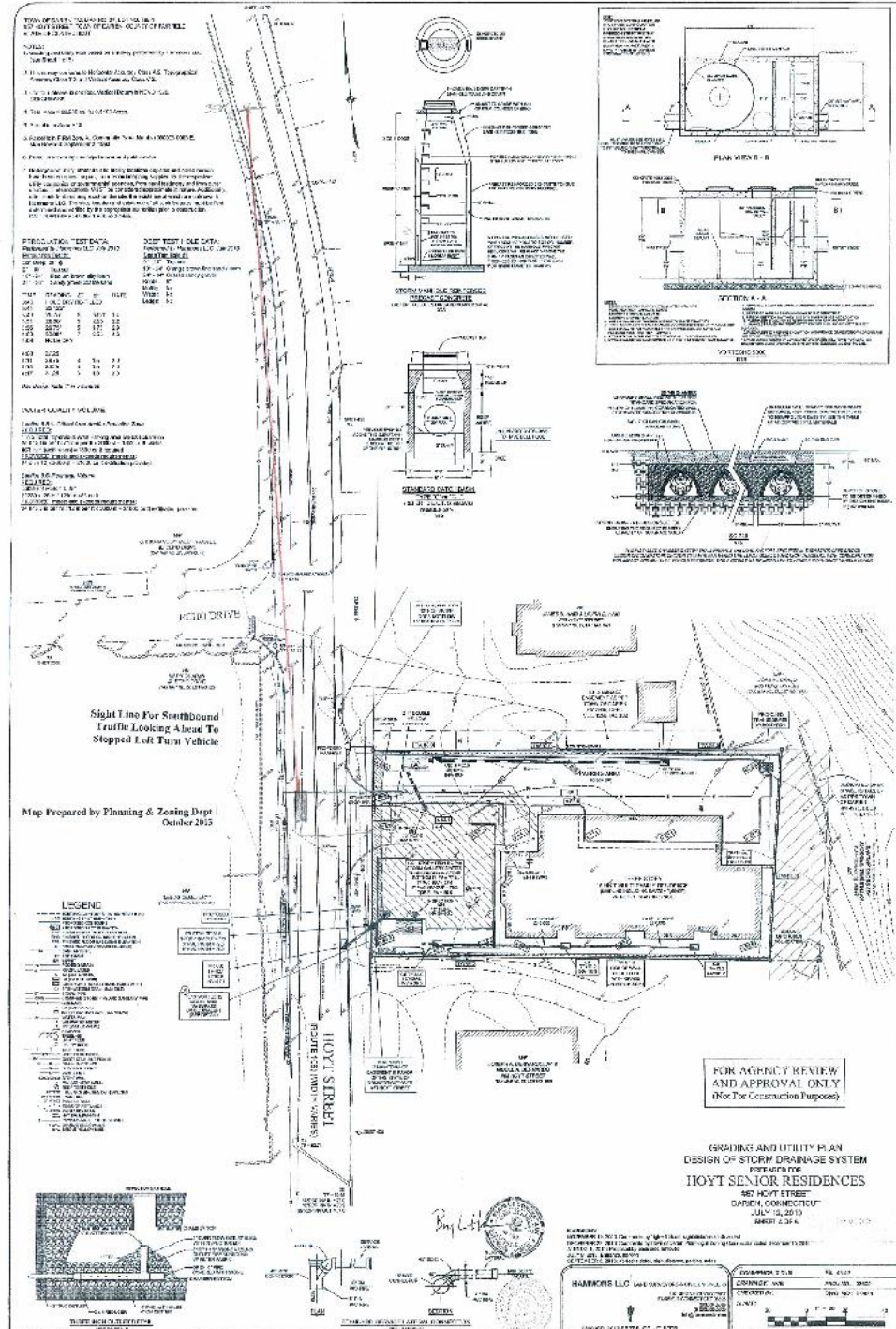
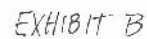


EXHIBIT A

EXHIBIT B



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Commission members thanked Mr. Spain for all his hard work and many (15+) years of service on the Planning & Zoning Commission.

There being no further business, the following motion was made: That the Planning & Zoning Commission adjourn the meeting. The motion was made by Mr. Voigt, seconded by Ms. Cameron and unanimously approved. The meeting was adjourned at 11:05 P.M.

Respectfully submitted,

David J. Keating
Assistant Planning & Zoning Director

10.29.2013.min